

In the Matter of Merchant Mariner's Document No. Z-990470 and all
other Licenses, Certificates and Documents
Issued to: RAFAEL V. GARCIA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

956

RAFAEL V. GARCIA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 24 October 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-990470 issued to Rafael V. Garcia upon finding him guilty of misconduct. The specification alleges that while serving as a messman on board the American SS ANTIGUA under authority of the document above described, on or about 17 October 1956, while said vessel was at Puerto Cortes, Honduras, he pushed another messman, Samuel D. Walton, Jr., to the deck while both seamen were performing their assigned duties.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. although advised of his right to be represented by counsel of his own choice, appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence the testimony of the Chief Steward who stated that he entered the galley just in time to see Walton hit Appellant on the forehead with a plate. Appellant and Walton were the only other witnesses. Appellant stated that while he and Walton were arguing, Walton raised a plate and struck Appellant on the face with it when he was directly in front of Walton.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-990470, and all other licenses, certificates and documents issued

to Appellant by the United States Coast Guard or its predecessor authority, for a period of one month.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 17 October 1956, appellant was serving as a messman on board the American SS ANTIGUA and acting under authority of his Merchant Mariner's Document No. Z-990470 while the ship was alongside a dock at Puerto Cortes, Honduras.

At approximately 0715 on this date, Appellant was preparing breakfast in the galley when messman Walton entered and commenced to perform his duties. Appellant upbraided Walton because he had failed to keep an agreement to start work for Appellant at 0630 that morning. An argument followed between the two seamen. When they were a short distance apart, Walton struck Appellant on the forehead with a plate which cut his head. They scuffled briefly until separated by other members of the crew. Apparently, the only other eyewitness to any part of the incident was the Chief Steward.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that since the Examiner accepted the testimony of the Chief Steward and Appellant (that Walton struck Appellant with a plate) despite the repeated denials by Walton that he so struck Appellant, Walton's additional testimony, that he first had been pushed to the deck by Appellant, should not have been accepted as the truth. This point is emphasized by the fact that Walton was being tried under a charge of striking Appellant with a plate. Therefore, Walton lied to protect himself by attempting to prove that he had acted in self-defense.

For these reasons, there is a strong inference that Walton did not tell the truth with respect to other material facts. Hence, there is no substantial evidence to support the charge against Appellant.

OPINION

Ordinarily, I accept the Examiner's findings as to credibility since they see and hear the witnesses. Although this Examiner did not record any specific findings as to credibility, he accepted Walton's testimony that he was shoved to the floor by Appellant but

rejected Walton's reiterated denials that he struck Appellant with a plate. This rejection was based upon Appellant's version which was very definitely corroborated by the testimony of the only disinterested witness, the Chief Steward.

Under these circumstances, I agree with Appellant's contention that a strong inference arises that the balance of Walton's testimony as to material facts is probably not worthy of belief.

Another point in connection with Walton's credibility is related to the Examiner's statement that Appellant appeared to be at least 30 pounds heavier than Walton and of a more sturdy physique. If Appellant had pushed Walton to the deck and immediately attacked him, as stated by Walton, it is very unlikely that Walton would have been able to regain a standing position or obtain possession of a plate by the time the Chief Steward entered the galley. It would have been inconsistent for Appellant to have given Walton an opportunity to get a plate in his hands to use as a weapon.

Consequently, it is my opinion that the evidence in support of the specification is not substantial. The ultimate finding and conclusion that Appellant pushed Walton to the deck are reversed.

ORDER

The charge and specification are dismissed. The order of the Examiner dated at Baltimore, Maryland, on 24 October, 1956, is

VACATED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 22nd day of March, 1957.